

**MINUTES OF THE
GREENSBORO BOARD OF ADJUSTMENT
SEPTEMBER 22, 2008**

A regular meeting of the Greensboro Board of Adjustment was held on Monday, September 22, 2008 at 2:00 p.m. in the City Council Chamber of the Melvin Municipal Office Building. Board members present were : Chair John Cross, Bill Strickland, Scott Brewington, Ryan Shell, Russ Parmele, Clinton Turner and Rick Pinto. Staff present were: Rawls Howard, Zoning Administrator, Loray Averett, Zoning Services Coordinator, as well as Becky-Jo Peterson-Buie, City Attorney's Office.

Chair Cross called the meeting to order and explained the policies and procedures of the Board of Adjustment. He further explained the manner in which the Board conducts its hearings and the method of appealing any ruling made by the Board. The Chair advised that each side, regardless of the number of speakers, would be allowed a total of 20 minutes to present evidence.

APPROVAL OF MINUTES OF LAST MEETING

Mr. Strickland moved to approve the minutes of the August 25, 2008 meeting minutes as submitted, seconded by Mr. Pinto. The Board voted 7-0 in favor of the motion. (Ayes: Cross, Strickland, Brewington, Shell, Parmele, Turner and Pinto. Nays: None.)

SWEARING IN OF STAFF

Staff was sworn in for their testimony in the following matters before the Board.

Chair Cross stated that there has been a request that BOA-08-24 117 South Elm Street to be withdrawn. He stated that he and Mr. Brewington had a conflict and would recuse themselves from this item.

Mr. Pinto moved to recuse Mr. Cross and Mr. Brewington from the matter, seconded by Mr. Strickland. The Board voted 5-0-2 in favor of the motion. (Ayes: Pinto, Strickland, Shell, Parmele and Turner. Nays: None. Abstained: Cross and Brewington.)

Vice Chair Pinto asked if there was anyone wishing to speak on this matter.

The applicant's representative, Mr. Amiel Rossabi asked that the matter be withdrawn.

Mr. Pinto moved to withdraw the request, seconded by Mr. Strickland. The Board voted 5-0-2 in favor of the motion. (Ayes: Pinto, Strickland, Shell, Parmele and Turner. Nays: None. Abstained: Cross and Brewington.)

Chair Cross stated that he and Mr. Brewington also have a conflict regarding the following case.

Mr. Pinto moved to recuse Mr. Cross and Mr. Brewington from the matter, seconded by Mr. Strickland. The Board voted 5-0-2 in favor of the motion. (Ayes: Pinto, Strickland, Shell, Parmele and Turner. Nays: None. Abstained: Cross and Brewington.)

OLD BUSINESS**VARIANCE**

- A) BOA-08-21: 3401 DOGWOOD DRIVE** Ricky Bott requests a variance from a side street setback requirement. *Violation:* An existing attached carport (which was recently constructed), encroaches 13.5 feet into a 15-foot side setback from Beverly Place. This case was continued from the July 28, 2008 and August 25, 2008 meetings. Table 30-4-6-1, Present Zoning-RS-12, BS-47, Cross Street-Beverly Place. (GRANTED)

Mr. Howard started that the applicant requests a variance for a recently constructed attached carport/garage which encroaches 13.5 feet into a 15-foot minimum side street setback adjacent to Beverly Place. This case was continued from the July 28, and August 25, 2008 meetings. The first continuance request was approved a one-time continuance allowance, based on only four members being available to vote. The August continuance was due to two members recusing themselves; thus there were not enough members left to have a quorum.

The property is a corner lot. It is located at the southwestern intersection of Dogwood Drive and Beverly Place on zoning map block sheet 47. It is rectangular in shape. The average lot width is 82 feet and the average lot depth is 213 feet. The total lot area is approximately 17,467 square feet.

On or around April 1, 2008, the applicant applied for and received an "ALTERATION" building permit, Number 2008-06252. The permit was to enclose an existing carport. The existing carport met and exceeded the minimum 15 foot setback from Beverly place. It was setback 17.9 feet which was 2.9 feet more than the 15 foot minimum setback. Typically, "ALTERATION PERMITS" do not include new footings or a new building footprint, only upfit or enclosure work. The Building Permit Records reflect that a footing inspection was made on April 30, using this building permit number. The inspector indicated this was due to the applicant deciding to enlarge the existing carport at the time of enclosing it.

On or around, May 28, 2008, the applicant applied for and received a "Building Permit to construct a carport addition, Number 200810556. The survey that was attached showed a cross-hatched structure attached to the house that was 17.9 feet from the property line adjacent to Beverly Place. The zoning office approved the location based on the permit request and the survey that was attached to the permit.

On June 4, 2008 the City Building Inspector approved the footing inspection for the carport. The approval was noted by the Building Inspector's initial on the permit card, Number 200810556.

On June 9, 2008, the Building Inspections Department contacted the zoning office about a concern that the carport was too close to the property line adjacent to Beverly Place. City Zoning Officer, Jeff McClintock made a site inspection, issued a Notice of Violation, and

informed the citizen to cease construction. The attached carport was being constructed 1.5 feet from the property line instead of 15 feet as required.

On June 10, 2008, the applicant came into the Planning Department to file a variance request. Mr. Bott presented a drawing to City Staff that showed the cross-hatched attached carport that was used for obtaining both of the previous mentioned permits. He was informed that it met the setbacks and did not need a variance. Mr. Bott stated that he did need a variance and then drew on the site drawing the location of the carport which was 1.5 feet from the property line. This drawing is included in each Board Member's packet.

On June 13, 2008, Zoning Officer, Jeff McClintock observed continuing construction on the carport and informed Building Inspections. On that same date, Building Inspection posted the property with a Stop Work Order. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 3.0 units per acre or less.

Vice Chair Pinto asked if there was anyone wishing to speak on this matter.

Derek Allen, attorney representing the applicant, was sworn in and stated that there was some controversy about the timing of what was submitted, when and also what was submitted. The documentation bears out that the applicant applied for and received a building permit on April 1, 2008, which ends with 6252, in order to enclose the currently existing carport. Then the applicant applied for a 2nd building permit ending in 0556, on May 28, 2008, for a carport addition. The survey attached, by William Knight shows hatched lines and at the bottom of that page says, "15 ft. BOC (Back of Curb)". The written statement by Nora Gardner, Permit Technician, says on May 28, 2008 at 11:00, Mr. Bott came into the Building Inspections office and told her what his understanding was in terms of where the carport could go and that Zoning had told him it had to be 15 feet back of curb. "I asked him to please show the additional 15 feet he was referring to on the site plan. I informed Mr. Bott that I would be faxing the site plan to four different departments; water, sewer, planning and zoning to get their approvals for the carport, and they would need to look at his site plan and see the work indicated on the permit applicant. He then began to draw the additional 15 feet, which is indicated by the dotted line on the site plan." This document was not a document that was submitted after he was given a Notice of Violation, but was in fact, part of his application and was approved by the four different departments. The status sheet has the signature from the inspector that went out and inspected the footers on June 4, 2008, for the 0556 building permit. The footers were in place and signed off on by the Building Inspections Department. If the B.I. Department had said it was incorrect, the applicant would have made changes at that time. Instead, he relied on the approval of the Inspector and continued working on the carport. He then received a Notice of Violation and stopped all work on the carport. He then talked to Kevin Pegram of Starmount Company who stated that they have no plans to install sidewalks in Starmount Forest subdivision at any time now or in the future. There have been no complaints or calls related to the carport addition and the neighbors do not have a problem with it. Several of the neighbors are in the audience showing their support of the proposed carport addition. It is felt that there is, clearly, reasonable use of the property, the hardship results from the unique configuration of the narrow corner lot and the physical layout of the house on the property, the hardship results from the direct application of the ordinance and

the hardship is not the result of the applicant's own actions as he sought out and received governmental approval for the project. The variance is in harmony with the intent of the ordinance and does preserves its spirit. The granting of the variance assures the public safety and welfare and does substantial justice as nothing in the applicant would cause public safety and welfare issues.

Rick Bott, the property owner and applicant, was sworn in and answered questions by the Board members.

Counsel Peterson-Buie cited the Ordinance for clarification.

No one spoke in opposition to the request.

Mr. Turner moved that in the matter of BOA-08-21, 3401 Dogwood Drive, the findings of fact are to be incorporated into the findings and the Zoning Enforcement Officer overruled and the variance granted as if the applicant complies with the provisions of the ordinance he can make no reasonable use of his property. If he is required to comply with the strict letter of the ordinance, the applicant will be required to remove the carport after receiving a building permit and having the Inspector inspect the footers. The hardship of which the applicant complains results from the unique circumstances related to his property as there is a unique configuration of the corner lot property and the physical layout of the property. The hardship results from the application of the ordinance to the property as the applicant is trying to comply with the side street setback requirements. The hardship is not the result of the applicant's own actions as the configuration of the property and the applicant relied on permission from the City to build the carport at the subject location on the property. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit as the variance requested by the applicant is in harmony with the setback requirements provided in the ordinance. The ordinance contemplates zero side setbacks and specifies that for corner lots the width of at least 40 feet, such as this lot, the side street setback may be reduced to provide greater buildable width. These exceptions demonstrate that side street setbacks may be a variance within the intent and purpose of the development ordinance. The granting of the variance assures the public safety and welfare and does substantial justice. The granting of the variance will enable the applicant to make reasonable use of this property without consequences to the surrounding property owners, seconded by Mr. Strickland. The Board voted 4-1-2 in favor of the motion. (Ayes: Parmele, Turner, Strickland, Shell. Nays:Pinto. Abstained: Cross and Brewington.)

B) BOA-08-23: 2323 FLEMING ROAD Lee Boyd requests a variance from a minimum street setback. *Violation:* A proposed single family dwelling will encroach 27.6 feet into a required 100- foot special setback from the centerline of Fleming Road. This case was continued from the August 25, 2008 meeting. Section 30-4-7.3(I)(1), Present Zoning-RS-15, BS-224, Cross Street-Old Acre Court. (GRANTED)

Mr. Howard stated that Lee Boyd requests a variance from a minimum centerline street setback. A proposed single family dwelling will encroach 27.6 feet into a required 100-foot special setback from the centerline of Fleming Road. The property is located on the western side of Fleming Road south of Old Acre Court. on zoning map block sheet 224. This case was continued from

the August 25, 2008 meeting. It is trapezoid (unique) in shape and contains approximately 21,000 square feet. This property has recently been annexed into the City limits. The effective annexation date was June 30, 2008. The applicant's front property line is shown to be in the middle of the Fleming Road right-of-way. Attached to this staff report is a copy of the metes and bounds deed description. The property boundaries are described in Deed Book 6282, Page 2494. The description does describe the property line as running along the center line of said road. This property does not have a front property line setback, only a centerline setback. The road exists as ribbon pavement and DOT will maintain to the edge of ditch adjacent to the ribbon pavement. If in the future, the road is widened the applicant's front property line could change (lot would be reduced in area). It is unlikely the centerline of this portion of Fleming will change. The current dedication width for Fleming Road is 60 feet; however, since, Fleming Road is classified as a minor thoroughfare it is possible that an eighty foot dedication will someday be required. This still is not likely to change the centerline location of the road. The applicant has relocated the proposed dwelling to the maximum extent possible in relation to his building envelope, which represents his minimum setbacks. The RS-12, Residential Single-Family District is primarily intended to accommodate moderate density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-12 will typically be 3.0 units per acre or less.

Chair Cross asked if there was anyone wishing to speak on this matter.

Allen Wilson, surveyor representing the applicant, 402 Blandwood Avenue, was sworn in and stated that they have reworked the original plan for the property and the request now is for 27.6 feet into the setback requirement. He pointed out that the property had an existing house on it that was built in the 1950s and they tried to put the proposed structure on the same line. Trying to use the setback lines has been difficult but with the new proposed variance it will work well on the property.

Lee Boyd, the property owner and applicant, 1108 Grecale Street, was sworn in and stated that he has purchased several properties in the past and constructed houses. He purchased the property several years ago and it was in the County at that time. Now that it is in the City there are other setback problems to deal with. The new proposed setbacks will work with the construction of a house on this property.

No one spoke in opposition to the request.

Mr. Brewington moved that in regard to BOA-08-23, the findings of fact are to be incorporated and the Zoning Enforcement Officer be overruled and the variance granted as there are practical difficulties and unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property because of the unique shape of this property as previously described and as a result of the time frame between when he purchased the property and being incorporated into the City. The hardship of which the applicant complains results from the unique circumstances related to the applicant's property as when the property was purchased it was in the County and now is within the city limited of the City. The hardship results from the application of the ordinance because the property is of a unique shape and the nature of the time frame from being in the County and the City. The hardship is not the result of the applicant's own

actions because of the incorporation into the City. The variance is in harmony with the general purpose and intent of the ordinance and preserves its spirit because the applicant is trying to maintain the neighborhood and work with the new guidelines he has been given. The granting of the variance assures the public safety and welfare and does substantial justice because granting the variance it does not create any obstacles which would create any hazards from the road, seconded by Mr. Turner. The Board voted 7-0 in favor of the motion. (Ayes: Cross, Pinto, Parmele, Turner, Strickland, Brewington. Shell. Nays: None.)

APPEAL OF A NOTICE OF VIOLATION

- A) **BOA-08-24: 117 SOUTH ELM STREET** The N Club appeals a Notice of Violation in reference to the use of an electronic changeable copy sign. The sign has been observed functioning as an outdoor advertising sign (billboard), which is not a permitted sign in the CB zoning district. This case was continued from the August 25, 2008 meeting. Sections 30-5-5.6 and 30-2-2.11, Present Zoning-CB, BS-1, Cross Street-East Market Street. (WITHDRAWN)

NEW BUSINESS

VARIANCE

- A) **BOA-08-25: 4698 BYERS ROAD** Habitat for Humanity of Greater Greensboro, Inc. requests a variance from a minimum street setback. *Violation:* A proposed single family dwelling will encroach 5.5 feet into a 20-foot setback from Byers Road. Tables 30-4-6-2 and 30-4-6-1, Present Zoning-RS-9(CL), BS-178, Cross Street-Lees Chapel Road. (GRANTED)

Mr. Howard stated that the applicant is proposing to construct a single family dwelling which will encroach 5.5 feet into a 20-foot minimum front street setback adjacent to Byers Road. The lot is located on the eastern side of Byers Road south of Lee's Chapel Road and is described as Lot 101 in Chapel Ridge Subdivision, recorded in Plat Book 161, Page 096. It is approximately 50 feet wide by 111 feet deep and contains 5,526 square feet. The applicant is proposing to construct a dwelling containing approximately 1,165 square feet. The lot has a 20-foot utility easement across the front and a portion of a 15-foot easement on the eastern side. No structure may encroach into any easement area. The applicant has applied for easement releases for the portions of the easements where the dwelling will be located. All relevant utilities have approved the easement release requests. Procedurally, the City Planning Board will meet and make a formal ruling at their September 17, 2008 meeting. With a favorable recommendation, the BOA can hear the request and move forward. The RS-9, Residential Single-Family District is primarily intended to accommodate moderate to high density single-family detached dwellings in developments where public water and sewer services are required. The overall gross density in RS-9 will typically be 4.0 units per acre or less.

Chair Cross asked if there was anyone wishing to speak on this matter.

Phil Barbie, representing Habitat for Humanity, was sworn in and stated that City staff has covered all the vital information related to this case and he had nothing to add. He was available to answer any questions the Board members may have.

No one spoke in opposition to the request.

Mr. Pinto moved that in regard to BOA-08-25, 4698 Byers Road, the findings of fact are to be incorporated and the Zoning Enforcement Officer overruled and the variance granted as there are practical difficulties or unnecessary hardships that result from carrying out the strict letter of the ordinance. If the applicant complies with the provisions of the ordinance he can make no reasonable use of the property because of the utility easements that run through the rear of the property, making it impractical to comply with the front easement of 20 feet and a 5.5 foot encroachment into that 20 foot minimum front setback seems appropriate. Also, because this is the last home to be constructed at a point in the subdivision where the street makes a 90 degree turn, there would be no development to the right side as you face the property such that some of the reasoning for having a front setback requirement would be alleviated. There would also be no sight issues. The variance is in harmony with the general purpose and intent as previously stated. The granting of the variance assures the public safety and welfare as the consideration of safety has been taken into account and there does not appear to be any safety considerations, seconded by Mr. Brewington. The Board voted 7-0 in favor of the motion. (Ayes: Cross, Pinto, Parmele, Turner, Strickland, Brewington. Shell. Nays: None.)

APPEAL FROM HISTORIC PRESERVATION COMMISSION

Mr. Cross and Mr. Brewington asked to be recused from this matter. Mr. Pinto moved to recuse Mr. Cross and Brewington, seconded by Mr. Strickland. The Board voted 5-0-2 in favor of the motion. (Ayes: Pinto, Strickland, Shell, Parmele and Turner. Nays: None. Abstained: Cross and Brewington.)

A) BOA-08-26: 911 MOREHEAD AVENUE John and Christine Penc appeal the decision of the Historic Preservation Commission to deny a Certificate of Appropriateness (Number1084) in reference to replacing some exterior wood trim/soffit with vinyl material on the existing building. Sections 30-4-4.2(E)5), Present Zoning-RM-26, BS-8, Cross Street-South Mendenhall Street. (RECOMMENDATION TO HPC TO REHEAR CASE)

Mr. Howard stated that the applicant is appealing a decision of the Historic Preservation Commission to deny a Certificate of Appropriateness in reference to replacing exterior wood trim/soffit with vinyl textured material on an existing building. The applicant is appealing a decision of the Historic Preservation Commission concerning exterior materials that have been changed on the existing building. Tax records indicate the building was built in 1963 and the use is a duplex/triplex. The pictures of the building indicate the building is a multifamily dwelling unit. Each BOA member has a copy of the verbatim minutes from the July 30, 2008 Historic Preservation Commission's meeting concerning the application for 911 Morehead Avenue.

The RM-26 Residential Multifamily Zoning District is primarily intended to accommodate multifamily uses at a density of 26.0 units per acre or less.

Vice Chair Pinto asked if there was anyone wishing to speak on this matter.

Darrell Fruth, attorney representing the applicant, 230 N. Elm Street, was sworn in and stated that explained the appeal process and cited the applicable ordinance and the guidelines in the Historic Preservation Manual. He referred to the transcript of the hearing before the Historic Preservation Commission held on July 30, 2008. He specifically pointed out that in another case before the HPC, vinyl had been approved as a material, especially due to the fact that this particular building was not an historic structure and was a non-contributing building in the historic district.

No one spoke in opposition to the request.

Mr. Pinto moved that in regard to BOA-08-26, 911 Morehead Avenue, the Historic Preservation Commission should rehear the case and consider allowing the small strip of vinyl as an appropriate material to be used on this particular building as the Board of Adjustment feels that errors in law were made by the Historic Preservation Commission and followed improper procedures and did not ensure proper due process rights were secured and their decision was not supported by competent material and substantial evidence and that their decision was arbitrary and capricious. The Board of Adjustment felt that in a separate building in this area the Commission had previously allowed vinyl windows on another building and when considering vinyl that is not a prohibited material, it is not a recommended material and the Board feels the HPC should at least speak to that issue when rendering their opinion; this is a non-contributing structure and is allowed more flexibility in varying from the requirements and the HPC should speak directly to the non-contributing structure and the fact that more flexibility is to be given to that structure and also, there was a statement that from the street you could not detect that there was a change in material and in view of the record, it looked like a very minimal change and the Board feels the HPC should consider directly that evidence as well. The HPC should also consider directly whether the change that is requested actually threatens the character of the residential neighborhood. For those reasons the Board of Adjustment overturns the decision of the Historic Preservation Commission and remands the case back to them to rehear the case and make determinations consistent with this ruling, seconded by Mr. Strickland. The Board voted 5-0-2 in favor of the motion. (Ayes: Pinto, Parmele, Turner, Strickland, Shell. Nays: None. Abstained: Cross and Brewington.)

OTHER BUSINESS:

Mr. Howard stated that the final copy of the Rules of Procedure had been submitted for viewing by the Board members. He asked that the Board vote to accept the new Rules of Procedure.

Mr. Pinto moved to accept the Rules of Procedure, seconded by Mr. Brewington. The Board voted 7-0 in favor of the motion. (Ayes: Cross, Pinto, Parmele, Turner, Strickland, Brewington. Shell. Nays: None.)

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There being no further business before the Board, the meeting adjourned at 4:22 p.m.

Respectfully submitted,

John Cross, Chairman
Greensboro Board of Adjustment

JC/jd